



Gaussian, Inc.

Agreement # 703622 LC 171
University of California Santa Barbara

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License to Use Agreement

THIS AGREEMENT is entered into as of this November 16, 1998 between GAUSSIAN, INC., having its principal place of business at Carnegie Office Park, Building 6 Pittsburgh, Pennsylvania 15106 ("GAUSSIAN"), and

The Regents of the University of California
on behalf of the Department of Chemistry at the Santa Barbara Campus

having its principal place of business at

Physical Sciences Building - North
Santa Barbara, CA 93106

("LICENSEE"):

WHEREAS, GAUSSIAN desires to grant to LICENSEE and LICENSEE desires to acquire from GAUSSIAN a non-exclusive license to install, use and modify certain Software on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Subject to the terms and conditions hereof, GAUSSIAN hereby grants to LICENSEE, for the term specified in Paragraph 15 hereof, a non-exclusive site license to install, use and modify solely at LICENSEE's principal place of business specified above, and on computers owned, operated by, and under the supervision of LICENSEE at such address, one copy of the Gaussian 98 system of computer programs, designed for use on all supported workstation computer systems. The computer programs, the magnetic media on which the programs are delivered, and any related documentation, are referred to collectively as the "Software."
2. For and in consideration of the license granted in Paragraph 1 hereof, LICENSEE will pay to GAUSSIAN, simultaneously with LICENSEE's execution and delivery of this Agreement, a license fee in the amount of One Thousand Five Hundred Dollars (\$1,500.00 U.S.).

LICENSEE will provide a tax exemption certificate to GAUSSIAN.
3. Upon the execution and delivery of this Agreement by the parties hereto and LICENSEE's payment of the license fee in compliance with the provisions of Paragraph 2 hereof, GAUSSIAN will deliver to LICENSEE one copy of the Software for the purposes recited above.
4. LICENSEE expressly recognizes and agrees that the license granted hereunder is personal to LICENSEE, and LICENSEE will not under any circumstances sell, give, disclose, lend, or otherwise distribute the Software, either as delivered to LICENSEE or as modified by LICENSEE, in any form, to third parties. If LICENSEE receives any requests to furnish to a third party all or a portion of the Software, either as delivered to LICENSEE or as modified by LICENSEE, it will immediately refer such requests to GAUSSIAN. If LICENSEE obtains the prior written consent of GAUSSIAN, then, subject to the limitations herein expressed, LICENSEE may disclose documentation relating to the Software, for review purposes only, to GAUSSIAN-approved third parties who have expressed an interest in obtaining from GAUSSIAN a license to use the Software. Such documentation will be limited solely to manuals, brochures and other printed materials, and will not include any code, whether source or binary, relating to or constituting a part of the Software. LICENSEE further agrees to maintain the confidentiality of the Software and represents to GAUSSIAN that access to the Software will only be given to its employees whose confidentiality obligations to LICENSEE include the Software. Notwithstanding anything contained herein to the contrary, LICENSEE will not use the Software in any manner or way that will compete with the business of GAUSSIAN or will provide assistance to any competitor of GAUSSIAN.
5. GAUSSIAN retains all ownership rights in the Software delivered to LICENSEE, and LICENSEE recognizes and agrees that it does not acquire by this Agreement any ownership rights, including copyright rights, in the Software delivered to LICENSEE by GAUSSIAN. Further, LICENSEE recognizes and agrees that it will have no ownership rights, including copyright rights, in any of the modifications made to the Software by LICENSEE, or in the Software as modified by LICENSEE, and that all such rights will belong exclusively to GAUSSIAN. LICENSEE hereby assigns and transfers to GAUSSIAN, for all uses and purposes whatsoever throughout the world, all right, title and interest in and to any and all derivative computer programs now or hereafter created by LICENSEE pursuant to or in connection with the license granted herein (the "Derivative Works"), including, but not limited to, all rights of copyright, both domestic and foreign, and any and all other proprietary rights in such Derivative Works. LICENSEE further agrees to execute any and all other documents that GAUSSIAN may reasonably require in furtherance of the immediately preceding assignment and transfer.

In respect of all such Derivative Works, if any, LICENSEE represents and warrants to GAUSSIAN that:

- a. LICENSEE is the sole creator of all portions of the Derivative Works not found in the Software;
- b. all portions of the Derivative Works not found in the Software are and shall comprise original works of authorship;

- c. neither the portion of the Derivative Works not found in the Software nor the assignment of rights therein infringes or otherwise conflicts or interferes with any rights whatsoever of any other person or party; and
 - d. there has been no previous assignment, transfer or license to another inconsistent with the assignment expressed in this Paragraph 5.
6. Subject to the restrictions set forth in this Agreement, LICENSEE may provide to third parties who are not directly or indirectly engaged in competition with GAUSSIAN and whose confidentiality obligations to LICENSEE include the Software, access to the binary code of the Software solely at LICENSEE's business address specified above and on computers owned, operated by, and under the supervision of LICENSEE at such address. However, LICENSEE will not permit third parties to use the Software as modified by LICENSEE unless it obtains the prior written consent of GAUSSIAN, which consent may be arbitrarily withheld for any reason whatsoever. Further, under no circumstances will LICENSEE quote any performance data to third parties except with respect to the Software as delivered to LICENSEE.
 7. LICENSEE may make a reasonable number of copies of the Software, either as delivered to LICENSEE or as modified by LICENSEE, solely for the purposes of backup and maintenance of the Software. Any such additional copies will be controlled by this Agreement and will be owned by GAUSSIAN. Such additional copies will be delivered to GAUSSIAN, or destroyed by LICENSEE, if so directed by GAUSSIAN, upon termination of this Agreement.
 8. Certain proprietary rights notices, including copyright notices, will be affixed to the Software delivered to LICENSEE. LICENSEE shall not remove, alter, obliterate, or in any way change the form or placement of such notices, which LICENSEE shall ensure appear on any copies made of the Software. Further, LICENSEE shall ensure that such proprietary notices, in the same form, are similarly affixed to the Software as modified by LICENSEE and on all copies thereof.
 9. GAUSSIAN will not provide any services under this Agreement in the installation or maintenance of the Software, it being expressly acknowledged that, if GAUSSIAN agrees to furnish such services to LICENSEE, the providing of such services will be governed by a separate written agreement.
 10. If the Software is used to obtain a result, and that result is published in the public literature, then LICENSEE agrees to acknowledge its use of the Software in an appropriate citation. The citation should include:
 - a. the name of the product (Gaussian 98);
 - b. the source (Gaussian, Inc., Carnegie Office Park, Bldg. 6, Pittsburgh, PA 15106);
 - c. the authorship as designated by GAUSSIAN; and
 - d. an appropriate copyright notice as designated by GAUSSIAN.

If the Software as modified by LICENSEE is used to obtain a result, and that result is published in the public literature, then LICENSEE will include an appropriate citation as defined above in this paragraph, and LICENSEE will also state in the citation that the Software used was a version of the specified GAUSSIAN Software which was modified by LICENSEE.

11. LICENSEE agrees not to accept or use any version of the Software other than the Software delivered to LICENSEE by GAUSSIAN pursuant to Paragraph 3 hereof or such Software as modified by LICENSEE under the terms of this Agreement. Furthermore, the restrictions of this paragraph will apply, without limitation, to modifications to the source code, editor scripts for making such modifications to the source code, object files, and executable images.
12. The Software is provided on an "as is" basis. GAUSSIAN represents and warrants that it has the right to grant the license granted herein. OTHERWISE, GAUSSIAN MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS OR PURPOSE OR OF MERCHANTABILITY, OR OF RESULTS OBTAINED FROM LICENSEE'S USE OF THE SOFTWARE, NOR SHALL GAUSSIAN BE LIABLE TO LICENSEE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF PROFITS OR INABILITY TO USE THE SOFTWARE.

LICENSEE represents and warrants that: (a) this Agreement constitutes a legally binding agreement of LICENSEE, fully enforceable in accordance with all of its terms and conditions; (b) LICENSEE possesses the requisite power and authority to execute and deliver this Agreement and to perform and comply with all of the obligations and restrictions imposed on LICENSEE herein; and (c) the individual signing this Agreement on behalf of LICENSEE has been duly authorized, empowered and directed to sign this Agreement on behalf of LICENSEE.

13. LICENSEE hereby agrees to indemnify and hold harmless GAUSSIAN from and against all damages, liabilities, attorney fees, and costs incurred by GAUSSIAN: (a) in defending against third party claims or threats of claims against GAUSSIAN arising out of LICENSEE'S use of the Software, either as delivered to LICENSEE or as modified by LICENSEE, excluding, however, any third party claims or threats of claims against GAUSSIAN arising out of any alleged copyright, trade secret or trademark infringement by the Software caused by GAUSSIAN or arising out of any misrepresentation, malfeasance or nonfeasance of GAUSSIAN; or (b) as a result of the breach of any LICENSEE's obligations, covenants or representations under this Agreement.
14. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT GAUSSIAN'S AGGREGATE TOTAL LIABILITY, IN ANY EVENT, FOR ANY COST, LOSS, OR DAMAGE, OR OTHER POTENTIAL OR ACTUAL EXPENSE WHICH IS IN ANY WAY RELATED TO THE EXECUTION, PERFORMANCE, OR SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE TO GAUSSIAN HEREUNDER, REGARDLESS OF THE FORM OF THE ACTION EMPLOYED.
15. This Agreement and the license granted to LICENSEE under Paragraph 1 hereof will be effective as of the date hereof and will continue for a term of twenty (20) years from such effective date; provided, however, that GAUSSIAN will have the right to immediately terminate this Agreement by delivering written notice thereof to LICENSEE at any time after the occurrence of any

of the following events of default:

- a. the failure of LICENSEE to observe any of the restrictions imposed on LICENSEE under this Agreement;
- b. the failure of LICENSEE to perform, observe or comply with any of its obligations, covenants or representations under this Agreement or under any ancillary agreement between the parties hereto relating to the subject matter hereof;
- c. the discovery that any representation or warranty made by LICENSEE herein was incorrect in any material respect when such representation or warranty was made or given;
- d. the filing of a voluntary petition in bankruptcy by LICENSEE; the institution of any bankruptcy, reorganization or insolvency proceeding against LICENSEE; LICENSEE's execution of an assignment for the benefit of creditors; LICENSEE's admission in writing of its inability to pay its debts as they mature; or the appointment of a trustee or receiver for a substantial part of LICENSEE's property; or
- e. the liquidation or dissolution of LICENSEE; the discontinuation of the business conducted by LICENSEE relating to the subject matter of this license; any change in the controlling interest of LICENSEE; or any sale of substantially all of the assets of LICENSEE.

Upon the expiration of the Agreement, the license granted herein will automatically terminate, and the Software and all materials relating to the Software, whether delivered to LICENSEE or generated by LICENSEE in connection with LICENSEE's modification of the Software, will be returned to GAUSSIAN, or destroyed by LICENSEE, if so directed by GAUSSIAN, all without prejudice to or impairment of the provisions of this Paragraph 15 and Paragraphs 5, 12, 13 and 14 hereof, all of which will survive the termination of this Agreement and will continue thereafter to be binding upon LICENSEE and GAUSSIAN.

16. LICENSEE will not assign or transfer this Agreement, or any rights and obligations hereunder, without obtaining the prior written consent of GAUSSIAN, which consent may be withheld by GAUSSIAN in its sole discretion for any reason whatsoever. The failure of either party to insist upon the strict enforcement of any of the provisions of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such provisions on any future occasion. If any provision of this Agreement is held to be unenforceable, such decision will not affect the validity or enforceability of any or all of the remaining provisions of this Agreement.
17. Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by Federal Express or any other comparable overnight courier service, or mailed by certified mail, postage prepaid, addressed to the party at the address first set forth above or to such other address as a party shall designate by written notice given to the other party in compliance with this paragraph.
18. This Agreement shall be governed, construed, and enforced in accordance with the copyright laws of the United States of America and all other applicable federal laws and regulations.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.



Addendum to License to Use Agreement

THIS ADDENDUM to a previous "LICENSE TO USE AGREEMENT" is entered into as of this August 10, 2011, between GAUSSIAN, INC., having its principal place of business at 340 Quinpiac Street, Building 40, Wallingford, Connecticut 06492 ("GAUSSIAN"), and

University of California, Santa Barbara
("LICENSEE")

having a place of business at

Ocean Road
Santa Barbara, CA 93106

and amends and supplements that certain License to Use Agreement, which was originally entered into on November 16, 1998, between GAUSSIAN and LICENSEE (the "LICENSE").

1. In consideration of a license fee of Four Thousand Five Hundred Dollars (\$4500.00 U.S.) and receipt of this fully-executed ADDENDUM from LICENSEE, GAUSSIAN permits LICENSEE to install and use, solely at LICENSEE's places of business specified below ("INSTALLATION ADDRESSES"), and on computers owned, operated by, and under the supervision of LICENSEE at such addresses, one **binary copy of the Gaussian 09 system of programs**, licensed for use on an unlimited number of all **currently supported Unix workstation** computer systems. The computer programs, any updates provided by GAUSSIAN in its sole discretion, the media on which the programs are delivered, and any related documentation, are referred to collectively as "the NEW SOFTWARE." In the event that GAUSSIAN, in its sole discretion, ships the NEW SOFTWARE to LICENSEE prior to GAUSSIAN's receipt of the license fee for the NEW SOFTWARE, LICENSEE shall pay the license fee within thirty (30) days of the date of the invoice for the NEW SOFTWARE.

INSTALLATION ADDRESSES are as follows:

- Main Campus, Santa Barbara, CA 93106
 - West Campus, Santa Barbara, CA 93106
2. Subject to LICENSEE's compliance with the provisions of Paragraph 1 hereof, GAUSSIAN grants to LICENSEE a non-exclusive license to install and use the NEW SOFTWARE, solely at the INSTALLATION ADDRESSES, all in accordance with and subject to the terms and conditions of the LICENSE, and the term "SOFTWARE," as used in the LICENSE, is amended to include the NEW SOFTWARE.
 3. LICENSEE represents, certifies, and warrants that it has and will act in accord with the terms and conditions of the LICENSE.
 4. LICENSEE hereby acknowledges that the SOFTWARE is to be used for educational and academic research purposes and may not be used for commercial purposes. For the purposes of this LICENSE, academic research means use and research which is not confidential and/or proprietary, and the results of which may be published immediately in the public domain without restriction. Commercial purposes include, but are not limited to, product development, consulting, or research in collaboration with commercial entities.
 5. LICENSEE may not provide access to the SOFTWARE to third parties. Notwithstanding the above, LICENSEE may allow access to the SOFTWARE by its faculty, staff, and students whose confidentiality obligations include the SOFTWARE, such access being subject to all of the restrictions set forth in the LICENSE and this agreement.
 6. If the SOFTWARE is used to obtain a result, and that result is published in the public literature, then LICENSEE agrees to acknowledge its use of the SOFTWARE in an appropriate citation. The citation should include:
 - a. the name of the product (Gaussian 09);
 - b. the source (Gaussian, Inc., 340 Quinpiac Street, Building 40, Wallingford, CT 06492);
 - c. the authorship as designated by GAUSSIAN; and
 - d. an appropriate copyright notice as designated by GAUSSIAN.

Alternatively, the citation may be made in the form of a reference to a published scientific journal article as designated by GAUSSIAN.

7. LICENSEE acknowledges that the SOFTWARE is licensed to LICENSEE for use at LICENSEE's INSTALLATION ADDRESSES. The export or re-export of the SOFTWARE is subject to the requirements of the United States Department of Commerce and/or the Office of Foreign Assets Control of the United States Treasury Department. Any export or re-export of the SOFTWARE by LICENSEE in violation of the laws of the United States is strictly prohibited. Any user of the SOFTWARE, as a condition of that use, agrees to comply with all of the provisions hereof.
8. The license for the NEW SOFTWARE shall be effective as of the date hereof and the license for the SOFTWARE (including both the originally licensed SOFTWARE and the NEW SOFTWARE) shall remain in effect for a term of twenty (20) years from the date hereof, subject to the termination rights specified in the LICENSE.
9. Once executed, this Addendum shall automatically become a part of the LICENSE, which constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. Only the terms and conditions of the LICENSE shall apply to the license of the SOFTWARE. All terms and conditions of any purchase order or other document issued by LICENSEE in connection with the SOFTWARE, or any that might be issued in the future for minor revisions to the SOFTWARE, shall not apply. This Agreement may be amended only by a written agreement executed by LICENSEE and GAUSSIAN. This Addendum is binding upon and will inure to the benefit of the parties hereto and to the extent modified hereby, the LICENSE will remain in full legal force and effect.

IN WITNESS WHEREOF, the parties duly executed this ADDENDUM as of the day and year first above written.

University of California, Santa Barbara

GAUSSIAN, INC.

Signature

By: _____
James S. Hess, Operations Manager

Type or Print Name

Date

Title

Date

TRX 53335.1-660
add_gbin_a (7/21/2011)